

At the 5/8/19 Council meeting,
CR-146 and
Bill 85 (2018), Proposed CD2
were referred to the
Committee on Zoning, Planning & Housing

REPORT OF THE COMMITTEE ON PLANNING

Voting Members:

Ikaika Anderson, Chair; Heidi Tsuneyoshi, Vice-Chair;
Michael Formby, Carol Fukunaga, Joey Manahan, Kymberly Marcos Pine

Committee Meeting Held
April 29, 2019

Honorable Ann H. Kobayashi
Interim Chair, City Council
City and County of Honolulu

Madam Chair:

Your Committee on Planning, to which was referred Bill 85 (2018), CD1 entitled:

"A BILL FOR AN ORDINANCE RELATING TO VACATION RENTALS,"

which passed Second Reading on and was the subject of a Public Hearing held at the Council's meeting of April 17, 2019, reports as follows:

The purpose of Bill 85 (2018), CD1 is to amend the Land Use Ordinance ("LUO"), Chapter 21, Revised Ordinances of Honolulu 1990, to further regulate vacation rentals. The Council initiated this LUO amendment proposal pursuant to Resolution 17-52, CD1.

Your Committee finds that the Planning Commission, after public hearings held on September 5 and 19, 2018, at which oral and written public testimony was received on the proposed LUO amendment, voted not to recommend approval of the proposal in concurrence with the recommendation of the Department of Planning and Permitting ("DPP") in the Attachment to Mayor's Message 152 (2018).

Your Committee finds that at a public hearing held on April 17, 2019 by the City Council, oral and written public testimony was received on the proposed LUO amendment.

In Committee Report No. 68, which the Council adopted at its meeting on April 17, 2019, your Committee set forth background information on the subject bill.

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At your Committee's meeting on April 23, 2019, action on the bill was postponed to further work on the measure.

At your Committee's meeting on April 29, 2019, your Committee considered Bill 85 (2018), CD1 and Bill 89 (2018), CD1 together. Bill 89 (2018), CD1 is the Administration's short-term rental proposal. By Departmental Communication 261, the DPP requested that the Council move forward with Bill 89 (2018).

At your Committee's meeting on April 29, 2019, the Hawaii Appleseed Center for Law and Economic Justice, Unite Here Local 5, the Lanikai Community Association, and 12 individuals testified in support of the bill. 14 individuals testified in opposition to the bill. The American Hotel and Lodging Association, State Senator Gil Rivere, and 10 individuals offered comments on the bill.

Your Committee received written testimony in support of the bill from Housing for Residents and 435 individuals. Written testimony in opposition to the bill was received from Oahu Alternative Lodging Association, Expedia Group, and 98 individuals. Sunset Point Residents, and nine individuals submitted comments on the bill.

After convening into executive session, your Committee has prepared a CD2 version of the bill, which makes the following amendments:

- A. Deletes SECTION 2 of the bill, which made amendments to Section 21-2.150-2 relating to a writ of mandamus. Renumbers subsequent SECTIONS accordingly.
- B. In renumbered SECTION 3 of the bill, adds a title to the proposed new ROH section.

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ADOPTED ON _____

COMMITTEE REPORT NO. 146

REPORT OF THE COMMITTEE ON PLANNING

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- C. In renumbered SECTION 10 of the bill, relating to the regulation of hosting platforms, deletes and replaces all sections except for proposed new Section 41-___.1 ("Definitions").
- D. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee finds that the bill, as amended herein, carries out the purpose of the General Plan and Development Plans of the City and is in the best interests of the people of the City and County of Honolulu.

Your Committee on Planning is in accord with the intent and purpose of Bill 85 (2018), CD1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as Bill 85 (2018), CD2. (Ayes: Anderson, Formby, Fukunaga, Pine, Tsuneyoshi – 5; Noes: None; Excused: Manahan - 1.)

Respectfully submitted,



Committee Chair

At the 5/8/19 Council meeting, CR-146 and Bill 85 (2018), CD2 were referred to the Committee on Zoning, Planning and Housing.

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ADOPTED ON _____

COMMITTEE REPORT NO. 146



A BILL FOR AN ORDINANCE

RELATING TO VACATION RENTALS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend the Land Use Ordinance to further regulate vacation rentals.

SECTION 2. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-3 to read as follows:

"Sec. 21-2.150-3 Advertisements for transient vacation units or bed and breakfast homes.

(a) Advertisements.

(1) Definitions. As used in this subsection:

"Advertisement" means any sign; banner; written, graphic, or pictorial statement; or broadcast in English or any other language, used to publicize or offer for accommodation any dwelling unit or lodging unit, or portion thereof, or any other permanent or temporary habitable space within the city as a bed and breakfast home or transient vacation unit.

"Person" means a judicial person or a natural person, and includes businesses, companies, associations, non-profit organizations, firms, partnerships, corporations, limited liability companies, and individuals.

(2) Prohibition. Advertisements for all bed and breakfast homes and transient vacation units are subject to this subsection.

(A) It is unlawful for any person to advertise or cause the advertisement of a bed and breakfast home or transient vacation unit without including in the advertisement:

(1) A nonconforming use certificate number obtained pursuant to Section 21-4.110-1 or Section 21-4.110-2; or

(2) For transient vacation units located in the resort district, resort mixed use precinct of the Waikiki special district, or in the A-2 medium density apartment district pursuant to



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Section 21-5.640(a), the street address, including, if applicable, any apartment unit number.

- (B) Upon receipt of a notice of violation, the advertisement must be removed within seven days. If the advertisement is not removed within seven days, a fine will be levied for each day the advertisement is on public display, as provided in subdivision (4).
- (C) The existence of an advertisement will be prima facie evidence that a bed and breakfast home or a transient vacation unit is being operated at the listed address. The burden of proof is on the owner of the subject real property to establish that the property is not being used as a bed and breakfast home or transient vacation unit, or that the advertisement was placed without the property owner's knowledge or consent.
- (3) Exemptions. The following are exempt from the provisions of this subsection.

 - (A) Legally established hotels, whether owned by one person, or owned individually as unit owners but operating as a hotel as defined in Chapter 21, Article 10.
 - (B) Legally established time-sharing units, as provided in Section 21-5.640.
- (4) Penalties. Any person who violates any of the provisions of this subsection shall be fined not less than \$25,000.00 and not more than \$50,000.00 for each day that the advertisement is on public display beyond seven days from the date a notice of violation is received. Landowners, agents, or any other person associated with the property shall be liable for each violation, whether or not they are named in the advertisement.
- (b) Nothing in this subsection precludes the department from seeking any other remedy against a violator of this section."



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SECTION 3. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-4 to read as follows:

"Sec. 21-2.150-4 Private right of action.

A neighbor may institute a civil action in any court of competent jurisdiction against any person for violation of the provisions of this chapter pertaining to bed and breakfast homes and transient vacation units and shall be entitled to all remedies available under the law or in equity appropriate to remedy any such violation, including but not limited to a fine equal to the gross amount paid by a customer to rent a bed and breakfast home or transient vacation unit, which shall be doubled if the violation is shown to be willful. The department and the zoning board of appeals do not have special competence in or primary jurisdiction over such violations and the neighbor is not required to exhaust any administrative procedures before instituting action. If the neighbor is the prevailing party in any legal action taken pursuant to this section, the court shall award reasonable attorneys' fees and costs as part of the costs recoverable. Any fine which has not been satisfied in full within 90 days and has not been successfully challenged by a timely writ of mandate shall constitute a lien against the real property as to which the violation occurred and may be recorded; provided that no such lien shall be imposed if the owner of the property did not commit a violation of this chapter in connection with the rental and the owner establishes that all phases of the rental, including advertising, offer and exchange, took place without the owner's knowledge. Due to the special competence of the department in investigating and remedying violations of this chapter, no action under this section may be brought until six months after the neighbor has filed a complaint with the department against the person alleged to be in violation of the provisions of this chapter pertaining to bed and breakfast homes and transient vacation units."



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SECTION 6. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-1 Nonconforming use certificates for transient vacation units.

(a) The purpose of this section is to ~~[treat]~~ permit certain transient vacation units ~~[which] that~~ have been in operation since prior to October 22, 1986, ~~[as nonconforming uses and to allow them]~~ to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.

~~[(b) The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.~~

~~[(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.]~~

~~[(d)]~~(b) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

- (1) between September 1, 2000 and October 15, 2000; then
- (2) between September 1 and October 15 of every even-numbered year thereafter.



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Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

~~[(e)]~~(c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.

(d) Advertisements for transient vacation units operating under a nonconforming use certificate pursuant to this section are subject to Section 21-2.150-3."

SECTION 7. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-2 Bed and breakfast homes--Nonconforming use certificates.

(a) The purpose of this section is to ~~[generally prohibit bed and breakfast homes, while permitting]~~ permit certain bed and breakfast homes ~~[which]~~ that have been in operation since prior to December 28, 1989, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.

~~[(b) The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include~~



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~~records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.~~

- ~~(e) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.]~~

~~(d)~~(b) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

- (1) ~~[between]~~ Between September 1, 2000 and October 15, 2000; then
- (2) ~~[between]~~ Between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

~~[(e)](c) [Except those bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts.] Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.~~



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~~[(f)]~~(d) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:

- (1) Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.
- (2) No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.
- (3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.
- (4) One off street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.
- (5) Advertisements for bed and breakfast homes operating under a nonconforming use certificate pursuant to this section are subject to Section 21-2.150-3.

~~[(g)]~~(e) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises."

SECTION 8. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.640 Time sharing and transient vacation units.

(a) Time sharing and transient vacation units ~~[shall be]~~ are permitted in the A-2 medium density apartment zoning district provided:

~~[(a)]~~(1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and

~~[(b)]~~(2) The resort district and the A-2 district ~~[shall]~~ have been rezoned pursuant to the same zone change application as part of a master-planned resort community.



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- (b) This subsection applies to any transient vacation unit subject to subsection (a), or located in the resort district or the resort mixed use precinct of the Waikiki special district. The owner, operator, or proprietor of the transient vacation unit, and any rental agent thereof, shall comply with Section 21-2.150-3, relating to advertisements for transient vacation units.

SECTION 9. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended:

- a. By amending the "transient vacation units" use or structure entry to read as follows:

"

Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
Transient vacation units		[P] P/c	

"

- b. By amending the "Ministerial uses" note to the table to read as follows:

"Ministerial uses:

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
- P = Permitted principal use
- P/c = Permitted use subject to standards in Article 5
- P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), or 21-9.80-8(d)
- P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct"



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SECTION 10. Chapter 41, Revised Ordinances of Honolulu 1990 ("Regulated Activities Within the City"), is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Article __. Hosting Platforms

Sec. 41-___.1 Definitions.

As used in this article:

"Bed and breakfast home" has the same meaning as defined in Chapter 21, Article 10.

"Booking service" means any reservation or payment service provided by a person that facilitates a transaction between an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit, and a prospective user of that bed and breakfast home or transient vacation unit, and for which the person collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation or payment services provided for by the transaction.

"Department" means the department of planning and permitting.

"Director" means the director of planning and permitting.

"Hosting platform" means a person that collects or receives a fee for booking services through which an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit may offer use of the bed and breakfast home or transient vacation unit. Hosting platforms typically, but not necessarily, provide booking services through an online platform that allows the owner, operator, or proprietor to advertise the bed and breakfast home or transient vacation unit through a website provided by the hosting platform, and the hosting platform conducts a transaction by which potential users arrange the use of and payment for the bed and breakfast home or transient vacation unit, whether the payment is made directly to the owner, operator, or proprietor, or to the hosting platform.

"Person" means a judicial person or a natural person, and includes businesses, companies, associations, non-profit organizations, firms, partnerships, corporations, limited liability companies, and individuals.

"Transient vacation unit" has the same meaning as defined in Chapter 21, Article 10."



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Sec. 41-____.2 Legislative Intent.

It is the legislative intent of the council to increase transparency and accountability for hosting platforms providing booking services for bed and breakfast homes and transient vacation units located within the city.

Sec. 41-____.3 Booking Services.

- (a) It shall be unlawful for a person acting as, or on behalf of, a hosting platform to provide, and collect or receive a fee for, booking services in connection with any bed and breakfast home or transient vacation unit located within the city if such bed and breakfast home or transient vacation unit is not lawfully registered, permitted, or otherwise allowed as a bed and breakfast home or transient vacation unit, as applicable, under Chapter 21 at the time the bed and breakfast home or transient vacation unit is rented.
- (b) Hosting platforms shall not collect or receive a fee, directly or indirectly through an agent or intermediary, for facilitating or providing services ancillary to a vacation rental or unregistered home-share, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit.

Sec. 41-____.4 Registration.

- (a) It shall be unlawful for any hosting platform to provide booking services to operators of bed and breakfast homes located within the city or transient vacation units located within the city without first registering with the department. In order to register, a hosting platform shall provide a hosting platform registration statement to the director, in a form prescribed by the department, pay a registration fee of \$_____, and agree in writing:
 - (1) To obtain written consent from all of its operators of bed and breakfast homes located within the city and operators of transient vacation units located within the city for the disclosure of the information required under Section 41-____.5; and
 - (2) To furnish such information to the city in accordance with Section 41-____.5.



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- (b) A hosting platform may cancel its registration under this section by delivering written notice of cancellation to the director. The director may cancel a hosting platform's registration under this section for cause, including any violation of this article, by delivering written notice of cancellation to the hosting platform no later than 90 days prior to the effective date of cancellation. Nothing in this section shall relieve the operator of a bed and breakfast home or transient vacation unit located within the city from the separate registration obligations under Section 21-5.____.

Sec. 41-____.5 Reporting.

- (a) All hosting platforms registered pursuant to Section 41-____.4 shall report to the director on a monthly basis, on the date and in the electronic format specified by the director, for each bed and breakfast home and transient vacation unit located within the city for which the hosting platform provided booking services in the preceding month:
- (1) The name, address, and transient accommodations registration identification number of the operator of such bed and breakfast home or transient vacation unit pursuant to HRS Section 234D-4;
 - (2) The address of the bed and breakfast home or transient vacation unit and the associated registration number pursuant to Section 21-5.____; and
 - (3) The number of nights each bed and breakfast home or transient vacation unit was rented and the rate or price at which it was rented.
- (b) The director may disclose such information to the appropriate state or city officials to ensure compliance with this article, state tax laws and county tax ordinances, and any applicable land use laws and ordinances.

Sec. 41-____.6 Penalties.

A violation of this article may result in a civil penalty of not less than \$25,000."

SECTION 11. No later than six months after the effective date of this ordinance, the department shall:

- (1) Establish and implement specific procedures by which the public may submit written or verbal complaints and investigation requests to the department regarding potential violations of applicable laws regarding bed



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and breakfast homes and transient vacation units. The procedures must include the establishment and staffing of a telephone hotline for verbal complaints and investigation requests from the public;

- (2) Establish and implement specific procedures by which the department investigates public complaints in a timely manner, efficiently obtains evidence pursuant to the investigations, and notifies the complaining parties of the status and results of the investigation; and
- (3) Conduct community outreach to educate the public regarding the complaint and investigative process, and publicize the availability of the hotline.

SECTION 12. No later than 10 days after the department receives the monthly reports from hosting platforms pursuant to Section 41-____.2, the department shall prepare and submit a report to the Council showing, by Council district, for the month covered by the corresponding hosting platform reports:

- (1) The total number of bed and breakfast home listings in each district; and
- (2) The total number of transient vacation unit listings in each district.

SECTION 13. In SECTIONS 2 through 9 of this ordinance, ordinance material to be repealed is bracketed and stricken and new material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.

SECTION 14. Severability. If any provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.



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SECTION 15. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ron Menor

Joey Manahan

DATE OF INTRODUCTION:

November 15, 2018
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

Mayor
City and County of Honolulu